



To Pay or Not to Pay – The Future of the College Athlete

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Abstract

This study addresses the court cases of *O'Bannon v. NCAA*, *Keller v. NCAA*, *Alston v. NCAA*, and *Jenkins v. NCAA*, which represent the attacks aimed at current NCAA policies and distribution of funds, or lack thereof, to student athletes in higher education institutions. Each case makes an argument for why student athletes should be granted the right to benefit over their status as players. With profits for the NCAA and partners soaring into the billions, American society and the American legal system is starting to question who really should be benefiting from the performances that take place on the fields of higher education. The prevailing trend based on rulings in cases against the NCAA so far seems to be in favor of paying student athletes. While the NCAA and partners have a lot of resources at their disposal, it could be only a matter of time before they stop dedicating those resources to court proceedings due to this trend. Institutions of higher education could be impacted by sports recruiting changes and the end of the concept of the student athlete.



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Introduction

The issue of compensating college athletes with wages, in addition to what they already receive through the form of scholarships and stipends, has long been debated outside the courtroom. Recently this issue has entered the courtroom in a series of cases that are shaping the way American society views college athletics. A number of recent court cases have played key roles in the redistribution of some of the power over college athletics away from the National Collegiate Athletic Association (NCAA).

O'Bannon v. NCAA involves a former UCLA basketball player who sued the NCAA for the use of university player names and popularity (*Edward O'Bannon v. National Collegiate Athletic Association*, 2014).

In *Keller v. NCAA*, Sam Keller, a former elite quarterback, sued the NCAA over the use of their “likenesses” in video games (Rickman, 2014). *Jenkins v. NCAA* involved a group of former division one basketball and football players targeting the five biggest conferences in an attempt to make the status quo illegal and compensate athletes accordingly (*Martin Jenkins v. National Collegiate Athletic Association*, 2014.)

Alston v. NCAA is another case where the NCAA was sued along with the SEC, ACC, Big 12 and Big Ten on the basis that these entities conspired to contain costs thereby fixing the value of scholarships (Dennie, 2014).

These court cases impact the way higher education classifies the college athlete and change the way the NCAA is currently functioning within higher education.

O'Bannon v NCAA

In 2009 the *O'Bannon v. NCAA* case consisted of twenty former college student athletes who played for an FBS football or Division 1's men's basketball team led by Ed O'Bannon, who brought an antitrust class action against the National Collegiate Athletic Association. The plaintiff didn't sue for a monetary value, but to change the practices of how the NCAA operates. The suit challenged the NCAA regulations that restricted payment for elite men's football and basketball student athletes.

The suit challenged the regulations that banned student athletes from receiving a portion of the profit that the NCAA and its member institutions received from the sale of licenses to use student athlete names, images, and popularity in videogames they produced, as well as during games and other footage the institutions market. (*Edward O'Bannon v. National Collegiate Athletic Association*, 2014).

The plaintiffs made the case that the NCAA rules violated the Sherman Antitrust Act, which is a federal statute that bars unfair competition. The plaintiffs believed that the NCAA had restricted trade in “college education market” and the group “licensing market”, both of which are national markets.

Outcome

The NCAA argued that the regulations were required to protect its intellectual property and fulfil their educational mission. In the NCAA constitution there is an amateurism provision that states a student's participation in college athletics should be motivated by education, and the physical, mental, and social benefits. A federal judge in August 2014 ruled in favor of the plaintiffs stating that the NCAA violated antitrust laws. The federal judge established that the NCAA cannot deny players from compensation for using their likenesses through digital media. The ruling suggested that institutions set up trust funds for student athletes. (*Edward O'Bannon v. National Collegiate Athletic Association*, 2014). The ruling places a 5,000 cap each year for the player. In addition the ruling grants access to higher scholarships for student athletes (Brodey, 2014).

The impact on student athletes is that they were granted more rights on how much compensation they will receive. The NCAA and institution current policies were in violation of the law. They will have to adhere to the judge's ruling and increase the compensation for their student athletes. Roger Abrams stated, “At some point, the NCAA will have to react with something other than, ‘We will appeal.’ That would suggest they aren't learning anything from the fact that life in college sports is changing.” (Maese, 2014, p.7).

Keller v NCAA

Keller v. NCAA also involved a suit against the NCAA over the use of likenesses in video games. The plaintiffs in this case did sue for a monetary value of 20 million based on the NCAA proceeding to market student athletes by face, jersey, number, and other attributes that are unique to the student without using their names. Over the next 10 years the new television contract in collaboration with the college football system is worth 7.3 billion dollars (Strauss and Elder, 2014).

Outcome

The Judge's decision was released on the brink of the O'Bannon trail awarding 20 million dollars to the plaintiffs. Additionally this case among others puts pressure on the NCAA to end their deal with EA sports that created the NCAA video games (Rickman, 2014). This is a landmark victory for current and former athletes.



Photo courtesy of Time Magazine/Andrew Hancock

Alston v. NCAA

Shawne Alston, the plaintiff in the *Alston v. NCAA* case, is seeking an injunction against the NCAA, SEC, Pac 12 and Big Ten compensation limits from players who competed from February 2010 to the present. The monetary value through this class action could be in the range of hundreds of millions of dollars (Solomon, 2014). The courts dismissed the initial complaint that was put forth. In 2012 the claim was accepted by the judges and has yet to be determined. (Gullo, 2014)

Jenkins v. NCAA

Jenkins v. NCAA claims that the NCAA has broken federal antitrust laws by hiding behind the mask of amateurism of a “student athlete”. The biggest issue is that even though these players compete at the highest level of competition, regardless of the profits the institutions and NCAA make under current policies the student athletes cannot make over the fixed rate of full-grant aid, which at some schools do not cover the cost of tuition. A victory would allow an open market for student athletes.

This case has yet to be concluded, but it could be the knockout case that derails the NCAA by releasing all restrictions on student athletes. (*Martin Jenkins v. National Collegiate Athletic Association*, 2014).

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